

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

VINCENT PACE,

Plaintiff,

v.

THE WELLPOINT COMPANIES, INC.,

Defendant.

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Cause No: 4:07-CV-1851-CDP

**DEFENDANT'S MOTION TO COMPEL
DISCOVERY RESPONSES FROM PLAINTIFF**

COMES NOW defendant WellPoint, Inc. ("WellPoint" or "Defendant") and, for its Motion to Compel Discovery Responses from Plaintiff, states as follows:

1. On December 27, 2007, Defendant propounded to Plaintiff its First Request for Production of Documents and First Set of Interrogatories, to which Plaintiff was, under applicable rules, to provide responses on or about January 29, 2008. (A copy of Defendant's discovery requests are attached hereto as Exhibit A.)

2. To date, Plaintiff has not responded to any of the discovery requests and all objections have been waived.

3. Pursuant to Federal Rule of Civil Procedure 37 and Local Rule 37-3.04, Defendant's counsel has made repeated, reasonable efforts to confer with Plaintiff's counsel in good faith about the lack of Plaintiff's responses, but, to date, Defendant's counsel has received no response. Such efforts by Defendant's counsel included: (1) a facsimile letter directed to Plaintiff's counsel on February 5, 2008 (Exhibit B hereto); (2) a facsimile letter directed to Plaintiff's counsel dated February 19, 2008 (Exhibit C hereto); (3) a voice mail left with Plaintiff's counsel's assistant on the afternoon of February 19, 2008 by attorney David W. Gearhart; (4) a facsimiled and e-mailed letter

to Plaintiff's counsel dated March 13, 2008 (Exhibit D hereto) and; a voicemail left at the number provided for Plaintiff's counsel during the afternoon of March 13, 2008 by attorney David W. Gearhart. Plaintiff's counsel has not responded to any of these attempted communications.

4. Plaintiff has failed to provide the requested discovery responses and Defendant is unlikely to obtain responses from Plaintiff absent a court order. Further, Defendant cannot properly investigate plaintiff's purported claims and take plaintiff's deposition without the requested discovery.

5. Pursuant to Federal Rule of Civil Procedure 37(a)(5), Defendant is entitled to recover its reasonable attorneys' fees incurred in obtaining the discovery that is the subject of this Motion.

WHEREFORE, Defendant WellPoint prays that this Court enter an Order compelling Plaintiff to fully respond to Defendants First Set of Interrogatories to Plaintiff Vincent Pace and Defendant's First Request for Production of Documents to Plaintiff Vincent Pace within five (5) days of the entry of the Court's Order, and further ordering Plaintiff to pay Defendant's reasonable attorneys' fees incurred in connection with obtaining said discovery responses.

Respectfully submitted,

LEWIS, RICE & FINGERSH, L.C.

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Attorneys for Defendant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Motion to Compel Discovery Responses was filed electronically with the Clerk of Court this 18th day of March 2008 to be served by operation of the Court's electronic filing system upon the following:

Lyell Champagne
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/s/David W. Gearhart